

REMARKS

This responds to the Office Action dated on May 3, 2006.

Claims 1-2, 4, 7-10 and 18 are amended, claims 3, 6 and 13 are canceled, and claim 19 is added; as a result, claims 1-2, 4-5, 7-12 and 14-19 are now pending in this application. The amendments to claims 7-10 and 18 adjust claim dependency in view of the cancellation of claim 3 and are not related to patentability of the subject matter of the claim.

§103 Rejection of the Claims

Claims 1-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Alexander et al. (U.S. Patent No. 6,189,111) in view of Le et al. (U.S. Patent No. 6,145,089). In order for the Examiner to establish a *prima facie* case of obviousness, three base criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *M.P.E.P.* § 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)). Applicant respectfully submits that the claims are not obvious in view of the combination of Alexander and Le because the combination does not teach or suggest each and every claim element.

For example, independent claim 1 as amended recites a high availability script execution component operable to "receive a failover script comprising a set of one or more commands and further operable to receive at least one failover attribute and operative to cause the failover script to be interpreted to produce a run-time failover domain from an initial failover domain." Claim 2 recites similar language with respect to a failover script. The Office Action correctly states that Alexander does not teach executing a failover script. However, the Office Action attempts to make up for the deficiency in Alexander by stating that Le, at column 4, lines 37-60, column

5, lines 53-67, and FIG 4 ref. 450 teaches a failover script. Applicant respectfully disagrees with this interpretation of Le. The failover script as defined and properly interpreted in the claims includes commands that provide a user the opportunity to define commands that will determine a run-time failover domain, thereby providing for flexibility in determining a run-time failover domain. None of the scripts mentioned in Le produce a run-time failover domain. Instead, the scripts in Le are more akin to action scripts in that they “start, stop, and restart a service or services” (see column 4, lines 37-52). Thus Le fails to teach a failover script. As a result, the combination of Alexander and Le also fails to teach a failover script. Because the combination fails to teach each and every element of claims 1 and 2, the claims are not obvious in view of the combination of Alexander and Le. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 1 and 2.

Claims 11-15 depend directly or indirectly on claim 1. Claims 4-10 and 16-18 depend, directly or indirectly on claim 2. These dependent claims are patentable over Alexander and Le for the reasons argued above, and are also patentable in view of the additional elements which they provide to the patentable combination. If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is also nonobvious. MPEP § 2143.03.

Further with respect to claim 15, Applicant respectfully traverses the rejection. The Office Action asserts that a node failover event is a load balancing event. The term load balancing is commonly understood to include events independent of node failure, such as rebalancing loads on a cluster in which none of the nodes has failed, but one or more of the nodes is busier than other nodes. Thus Alexander does not teach or suggest that a failover event may be a load balancing event.

New Claim 19

Claim 19 has been added in this response. Support for claim 19 may be found throughout the specification and in particular on pages 12 and 13 of the specification. Applicant respectfully submits that no new matter has been introduced in the new claim. Claim 19 depends from claim 1 and therefore inherits the elements of claim 1. New claim 19 is allowable for the reasons discussed above with respect to claim 1. Further, new claim 1 recites a plug-in for an application that allows an application to operate as a high-availability application even if the application was

not originally designed as such. Applicant has reviewed Alexander and Le and can find no teaching or suggestion of the subject matter recited in new claim 19.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6954 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.


Respectfully submitted,

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By 
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 28 day of September, 2006.



Name



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